

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 4th DAY OF OCTOBER, 2012)

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Original Application No.627 OF 2007

(U/S 19, Administrative Tribunal Act, 1985)

Rahman Khan Tailor (H.S) Son of Sri Sher Mohd. Aged about 47 years, Resident of 55/- Type I Ordnance Equipment Factory Hazaratpur, Estate Ordnance Equipment Factory, Hazaratpur.

.....Applicant

V E R S U S

1. Union of India, through the Secretary, Ministry of Defence, (Production South Block) New Delhi.
2. Additional Director General, Ordnance Factories Ordnance Equipment Factories, Group Head Quarter, Kanpur.
3. General Manager, Ordnance Equipment Factory Hazaratpur-282103.

.....Respondents

Advocates for the Applicant:- Shri M.K. Upadhyay

Advocate for the Respondents:- Shri R.K. Srivastava

O R D E R

The present original application has been filed under section 19 of the Administrative Tribunals Act, 1985 where the applicant impugned the order dated 30.3.2006 passed by the General Manager, Ordnance Equipment Factory, Hazratpur inflicting the punishment and the order of the Appellate Authority dated

28.05.2006 *Jasmine Abu*
17.5.2006 rejecting his statutory appeal.

25.08.2006 *Jasmine Abu*

2. The facts are in brief, that the applicant was placed under suspension on 17.1.2003 by the then General Manager, i.e. Sri J.K.

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Agrawal. The said order was withdrawn on the same very date by the same authority. By order dated 18.1.2003 the Deputy General Manager Personnel even passed an order withdrawing the chargesheet. Subsequently, on 3.4.2003 the applicant was served with a chargesheet by the then General Manager i.e. Shri J.K. Agrawal. The applicant denied the charges leveled against him and requested the respondents that the authority against whom the allegation has been made can not issue chargesheet. Therefore, he requested that the disciplinary authority be changed in accordance with rules. Without considering his request, on 8.10.2003, Shri D.K. Mishra, Joint General Manager, Ordnance Equipment Factory Hazratpur was appointed as an enquiry officer. The applicant also moved an application for change of enquiry officer being biased, on the ground that he acted on the direction of the disciplinary authority to this effect the applicant also wrote a letter on 7.4.2004, copy of which has been appended as Annexure-10 where the applicant has requested the enquiry officer to stay the proceedings till the issue is decided. The enquiry officer himself turned down the request and proceeded further. The disciplinary authority after considering the inquiry report passed an order on 30.3.2006 inflicting the punishment of reduction of pay by one stage with cumulative effect. Against which the applicant preferred statutory appeal which too was dismissed by the appellate authority vide its order dated 25.8.2006, hence the original application.

3. Pursuance to notice respondents filed detailed counter affidavit resisting the claim of the applicant by filing detailed counter affidavit. It is categorically stated by the respondents that

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the applicant did not cooperated in the enquiry proceedings, therefore, the enquiry officer after applying principles of natural justice have submitted the enquiry report, based upon the above, order of punishment has been passed.

4. I have heard Shri M.K. Upadhyay, learned counsel for the applicant and Shri R.K. Srivastava, learned counsel for the respondents. Shri Upadhyay, learned counsel for the applicant vehemently argued that the enquiry proceedings and subsequent order deserves to be set aside only on the ground that the same has been passed in an arbitrary manner. He urged that the person/authority against whom allegations have been leveled and which become basis of issuance of chargesheet cannot act as disciplinary authority and cannot issue chargesheet. In this respect he placed reliance upon a judgment in the case of *Arjun Choubey Versus Union of India and Others reported in 1984 SCC (L&S) 290* and in the case of *Chandra Deo Singh Versus Union of India and Others reported in [1989] 9 ATC 133*. He further urged that even the impugned order is liable to be set aside on the ground that the same has been passed without firstly deciding the application for the change of enquiry officer, to this effect he draw my attention to Annexure-10 letter dated 7.4.2004 and submitted that once doubt has been raised against the enquiry officer then it was incumbent upon the disciplinary authority to change the enquiry officer or to pass appropriate order. He referred to the instructions issued by Department of Personnel and Training to this effect dated 19.11.1972. To this effect he place reliance upon a judgment of the Ernakulam Bench of this Tribunal in the case of *G.K. Murugan*

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Versus Union of India and Others reported as [1990] 12 ATC 115. On the other hand, Shri Srivastava who represents the respondents argued that the enquiry has been conducted in a fair manner and it is the applicant who did not participated in the enquiry, therefore, it cannot be held that the enquiry has been conducted in an illegal manner.

5. I have considered the rival submissions and the judgment cited by learned counsel for the parties. The question is to be decided that whether a person against whom allegation has been leveled by the delinquent officer can act as Disciplinary Authority or can issue chargesheet. Secondly, whether the delinquent officer have a right to move an application for change of the enquiry officer. Admittedly, the chargesheet was issued by Shri J.K. Agrawal, General Manager against whom the applicant leveled allegation. Article V is directly related to him, therefore, he could not have act as a disciplinary authority and does not had issued the chargesheet. In this regard, my view is supported by a judgment of Chandra Deo Singh (Supra), para 4 of the judgment reads as under:-

“4. In this case the applicant has taken up several grounds challenging the inquiry proceeding. The first ground taken is non-supply of the material documents. We do not accept this contention as from the record we find that he had inspected the same at a later date. It has been further contended by the side of the applicant that the whole inquiry proceeding is bad as it was initiated by an authority not competent to do so. On a consideration of the materials on record and the law on the point we feel inclined to accept this contention. By Serial Circular No.7352, dated 15.12.1969, the Railway Board has clarified that action to initiate disciplinary action for imposition of a major penalty and to issue charge-sheet in the case of a non-gazetted can be taken by an authority competent to impose any of the major penalties on the railway servant and this cannot be taken by an authority competent to impose any of the minor penalties as was permissible under the old rules.

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It appears from the charge-sheet issued against this applicant (vide Annexure-A to the application) that the major penalty charge-sheet was issued against the applicant by the AME (C&W)-I, Mughalsarai. On a scrutiny of Schedule II appended to the Railway Servants (Discipline & Appeal) Rules, 1968 we find that the AME was not the competent authority to impose any of the major penalties on this applicant. Such being the position and in view of the Railway Board's circular mentioned above we hold that initiation of the disciplinary proceeding against the applicant was bad in law. We must mention another important fact in this regard. From the charge-sheet and the imputation of misconduct we get it that the allegation against the applicant was that on 7.8.1980 at 12.15 p.m. a group of railway staff being led by this applicant gheraoed the AME (C&W)-I i.e. Shri B.S. Sharma and kept his confined for more than an hour. It appears from Annexure-A, i.e. the charge-sheet that it was issued by the same AME (C&W)-I, Shri B.S. Sharma himself. In our opinion, when he was not legally competent to issue it and when he was personally involved in the matter he should not have issued the charge-sheet. So, we have no other alternative than to hold that the charge-sheet is ex facie invalid.

6. The respondents are bound to decide the application of the delinquent officer for change of enquiry officer in terms of Government of India instructions dated 19.11.1972.

*Corrected vide
Jasmin Ahu 25.08.2006 Jasmin Ahu
Jasmin Ahu 28.05.2006 Jasmin Ahu
Jasmin Ahu
Served 31.1.2013*

7. In view of the above, I find that the impugned orders dated 30.3.2006 and 17.5.2006 does not sustain. Accordingly, the same are set aside. OA is allowed. However, the respondents are at liberty to instate the proceedings if deem fit from where the fault has been detected. The applicant is ~~entitled~~ for all consequential benefits. No costs.

Clangs
Member-J

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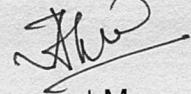
M.A. No. 1495/13
In
O.A. No. 627/07

12.04.2013

Hon'ble Ms. Jasmine Ahmed, Member (J)

Shri M.K. Upadhyay, counsel for the applicant and Shri R.K. Srivastava, counsel for the respondents are present.

MA for correction- I found that in the order dated 04th October, 2012 in OA No. 627/07 there is a typographical error occurred in date in Para No. 1 and 7. The date mentioned in the order is 17.05.2006 whereas the date should be 25.08.2006. The correction is allowed and the changes should be made in the Original Application. The copy of fresh order be furnished to the parties counsel. Accordingly, MA is disposed of.



J.M.

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